

LATHAM & WATKINS

ATTORNEYS AT LAW

1001 PENNSYLVANIA AVE., N.W., SUITE 1300
WASHINGTON, D.C. 20004-2505

TELEPHONE (202) 637-2200

FAX (202) 637-2201

TLX 590775

ELN 62793269

PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
FAX (312) 993-9767

LONDON OFFICE

ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
TELEPHONE + 44-171-374 4444
FAX + 44-171-374 4460

LOS ANGELES OFFICE

633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 485-1234
FAX (213) 891-8763

MOSCOW OFFICE

113/1 LENINSKY PROSPECT, SUITE C200
MOSCOW 117198 RUSSIA
TELEPHONE + 7-503 956-5555
FAX + 7-503 956-5556

NEW JERSEY OFFICE

ONE NEWARK CENTER
NEWARK, NEW JERSEY 07101-3174
TELEPHONE (201) 639-1234
FAX (201) 639-7298

NEW YORK OFFICE

885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
FAX (212) 751-4864

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 540-1235
FAX (714) 755-8290

SAN DIEGO OFFICE

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
FAX (619) 696-7419

SAN FRANCISCO OFFICE

505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2562
TELEPHONE (415) 391-0600
FAX (415) 395-8095

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April 29, 1997

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Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-45 Ex Parte Presentation

Dear Mr. Caton:

This letter is to advise you that Nicholas W. Allard of Latham & Watkins on behalf of Pacific Telecom, Inc. ("PTI") met with Karen F. Kornbluh to discuss matters involved in PTI's various sets of comments in the above-captioned proceeding. The attached handout summaries the discussions. Pursuant to Section 1.1206(a)(2) of the Commission's Rules, two copies of this letter have been filed with the Secretary. Please contact the undersigned if there are any questions regarding this matter.

Respectfully submitted,

Nicholas W. Allard
Nicholas W. Allard

cc: Karen F. Kornbluh

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USF White Paper

RURAL TASK FORCE IMPLEMENTATION

1 OVERVIEW

The Joint Board proceedings in CC Docket No. 96-45, emanating from the Telecommunications Act of 1996 (and particularly Sections 214(e) and 254), have served to delineate the particular needs and unique conditions surrounding rural universal service issues. In its forthcoming May 8th Order (required by Section 254(a)(2)), the FCC is presented with the opportunity, based upon the record in that proceeding, to adopt a cohesive two-part procedural strategy directed to rural consumers and carriers. The first part, supported by the Rural Telecom Coalition and the State members of the Joint Board, would authorize a transition period, the first three years of which would be based upon recognition of the actual costs incurred by rural carriers in achieving Congressional universal service goals for rural and insular areas.

The second element of the May 8th Order would establish a task force, under Joint Board auspices, to examine rural issues and to make recommendations focused upon the period extending beyond the initial transitional period. The task force would be composed of representatives of rural carriers currently participating in the existing high cost fund (see 47 C.F.R. §69.116), interacting with the state and federal staff of the Joint Board. The task force would examine rural service issues, primarily focusing on the appropriateness of cost modeling as a vehicle for future universal service funding, and make recommendations to the Joint Board for potential future adoption and implementation. Any such recommendations would be purely advisory in nature and subject to a full opportunity for comment and reply under ordinary Joint Board and FCC procedural requirements.

A task force so instituted does not implicate the Federal Advisory Committee Act. It would be directly responsive to the rural carriers, which have argued for special treatment before the FCC and the Congress. It would also exclude non - “rural telephone company” (see 47 U.S.C. §153(37)) involvement, thus limiting fund size prospectively. The creation of a task force would also respond to Congressional concerns regarding investment and rate policies for rural America, and particularly the skepticism being voiced concerning proxy cost model use in high cost areas. Implementing a task force now also ensures that a follow-on course will be developed for implementation at the conclusion of the currently proposed rural company transition.

2 FOUNDATION

The basis for a separate rural task force can be found in multiple sources:

(a Congress: In the Act, Congress recognized the need to extend basis services to “all regions of the Nation” (§254(B)(2)), including specifically “rural and high cost areas” (§254(b)(3)). This focus is reinforced by the provisions relating to “eligible telecommunications carriers” under Section 214(e) (e.g., limited multiple entry in rural

serving areas (214(e)(2)) and service area definitions (§214(e)(5)). This focus is further reflected in the March 3, 1997 letter from numerous Senators to Chairman Hundt, which noted, "In providing for competition, particularly in rural areas, it is clear in the Act that Congress rejected a 'one-size-fits-all' approach" (p.1).

(b) Joint Board: The Joint Board addressed in several paragraphs the "special characteristics" and "unique situations" faced by rural carriers and authorized a 6-year transition period (Recommended Decision, CC No. 96-45, November 8, 1996, para. 271, 272, 283).

(c) State Members: In their letter to the FCC of March 26, 1997, the State members specifically drew attention to the prior requests of rural carriers and recommended adoption of a rural task force to further study rural cost issues:

"A rural task force should provide valuable assistance in identifying the issues unique to rural carriers and analyzing the appropriateness of proxy cost models for rural carriers. We recommend that the FCC, in its order, appoint a rural task force to work under the auspices of the Joint Board to assist in efforts to improve the cost proxy models for rural carriers. We further recommend that the Joint Board and the FCC solicit public comment on any findings or reports of the rural task force." (p.4)

(d) Rural Carriers: In response to CCB solicitation of comments, Pacific Telecom, Inc. (which operates "rural telephone companies" under the Act) and USTA specifically requested establishment of a rural task force (ex parte comments filed February 18, 1997). Separately, on March 7, 1997, four national telephone associations, representing virtually all "rural telephone companies" in the nation, requested that the FCC modify the proposed transition plan to recognize actual continuing investment in rural areas. The task force proposal is consistent with that request -- a fact demonstrated subsequently when, on April 3, 1997, both the Small Company Committee and the Mid-Size Company Committee of USTA unanimously adopted resolutions in support of the creation of such a task force.

(e) Consumer Interests: Although not commenting on a task force, per se, the Competition Policy Institute has specifically recommended a special transition period for "rural telephone companies" in recognition of the unique problems associated with serving consumers in rural areas.

3 STRUCTURE OF THE TASK FORCE

The Common Carrier Bureau, in January, 1997, empaneled groups of experts to discuss and to develop proxy cost models for potential implementation as part of the future universal service funding mechanism to be adopted pursuant to Congressional requirement. A similar approach can be utilized to address rural serving issues which, by general agreement, have not yet been adequately identified and resolved in the proceedings held to date. The use of Congress' "rural telephone company" definition to define the task force is supported by the Act, by the previous findings of the Joint board, and by the rural telephone companies, themselves. No

exclusion or discrimination would result, since any and all parties would have an opportunity to comment on any resulting recommendations, prior to implementation by the FCC.

The FCC can authorize the Joint Board to empanel a 9-person task force (NECA, for example, has 15 Directors, 47 C.F.R. §69.602(b)). The representatives would be officers or employees of “rural telephone companies” as defined under the Act. The Joint Board could solicit recommendations for task force participation from the following rural telephone company organizational membership:

- United States Telephone Association (2)
- Independent Telephone & Telecommunications Alliance (1)
- National Telephone Cooperative Association (2)
- Organization for the Promotion and Advancement of Small
Telecommunications Companies (2)
- National Rural Telecom Association (2)

These organizations are fully representative of the rural telephone companies effected by the new high cost rules, and have been active on behalf of such companies in the Joint Board proceedings to date.

The panel would work in conjunction with the state and federal staffs of the Joint Board, thus ensuring continuity and regulatory coordination of the process. The task force would bear its own expenses, via the companies represented, and would receive no federal funding. The task force would utilize the expertise and resources of its constituent members or their trade associations to develop responses to high cost fund issues, including continued work on cost modeling in a rural context. The task force would establish an independent schedule for meetings and would render periodic reports to the Joint Board, as requested thereby. No recommendation of the task force would have binding effect on either the Joint Board or the FCC, but would have the evidential weight due any industry study of such depth.

As proposed, the task force would appear to raise no issue under the Federal Advisory Committee Act (5 USC App. (1995), see next section). The “rural telephone Company” composition of the task force directly relates to the scope of the subject matter consigned to the task force, and thus is not unduly restrictive. The task force would not be government-funded, and would not be highly structured or organized (rather, ad hoc in nature, given the finite duration and limited subject matter). The FCC would not run or direct this group, nor would it have any direct input to the group’s formulations. Task force recommendations would not be rendered to the FCC, but rather to the Joint Board and the public for further processing.

4 FEDERAL ADVISORY COMMITTEE ACT (FACA) CONSIDERATIONS

Establishing a separate rural task force to examine cost modeling issues would not invoke the strictures of the Federal Advisory Committee Act (“FACA”). FACA, 5 U.S.C. App. (1995). Generally, FACA does not apply to groups performing staff functions to a committee that already is subject to FACA, which in turn provides advice to a federal agency. National Anti-Hunger Coalition v. Executive Committee, 557 F.Supp. 524(D.D.C.), *aff’d*, 229 U.S. App. D.C.

143, 711 F.2d 1071 (D.C. Cir. 1983) (holding, *inter alia*, that task forces designed to gather information and formulate possible recommendations for consideration of advisory committee were not subject to FACA). Thus, a task force established by and reporting to the Federal-State Joint Board, rather than the FCC directly, is insulated from FACA's requirements.

In addition to this general exception, FACA does not apply if (i) although the FCC creates a group, the FCC does not run the group; (ii) once the group is established, FCC officials attend task force meetings, yet do not have any input on the formulation of any of the task force's plans; and (iii) the task force does not receive any federal funds. Natural Resources Defense Council v. E.P.A., 806 F.Supp. 275, 278 (D.D.C. 1992). Thus, it is entirely appropriate for the FCC to establish a rural task force to examine the most appropriate way for rural telephone companies to recover their costs pursuant to a newly-developed cost model without being subject to the requirements of FACA.

5 PUBLIC INTEREST CONSIDERATIONS

The establishment of a rural task force addresses a number of current and prospective public interest concerns. Presently, the rural carriers, themselves, have raised and consistently maintained the necessity for examining rural issues from a rural perspective (as referred to above). Their efforts have influenced the State Members and staff of the Joint Board, and a number of influential Members of Congress (as cited above).

By recommending the creation of a rural task force in its May 8th Order, the FCC simultaneously addresses each constituent interest group in its own terms. Further, it does so:

- (a) without premature determination of the issues.
- (b) without creating a precedent applicable to larger LECs or others.
- (c) without transgressing against its own procedural requirements, and
- (d) without surrendering control over the decision-making process and the final decision, under Section 410(c) of the Act.

Most importantly, a task force process will maximize the likelihood that any final high cost fund decision will adequately address the basic needs of rural consumers, thus achieving the goals of the Act. This course serves the public interest, and coincidentally may help to remove or reduce the occasion for future friction with the Congress on this subject.